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HOPKINS et al. v. WAMPLER.

Nov. 19, 1908.

[62 S. E. 926.]

1. Wills (§ 52*)—Probate—Proceedings to Establish.—In probate proceedings, it is necessary to show, not only that the will was executed pursuant to the statute, but that it was the will of a capable testator.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 101; Dec. Dig. § 52.*]

2. Wills (§ 52*)—Probate—Presumptions—Capacity of Testator.—The due execution of a will being proved, it is presumed that it is the will of a capable testator.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 101; Dec. Dig. § 52.*]

3. Wills (§ 52.*)—Testamentary Capacity—Burden of Proof—Presumption.—Where testator's sanity is put in issue by evidence, the burden is on proponent to show his testamentary capacity, but the presumption of sanity obtains upon the trial of that issue until it is overcome by contestant's evidence.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 104-109; Dec. Dig. § 52.*]

4. Evidence (§ 63*)—Presumptions—Sanity.—Every man is presumed sane until evidence to the contrary is produced.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 83; Dec. Dig. § 63.*]

5. Wills (§ 329*) — Probate — Actions — Instructions — Sanity of Testator.—In a will contest, an instruction that a proponent must prove by a preponderance of the evidence that the instrument offered was the true will of a capable testator, and nothing short of clear and convincing evidence will suffice, but which omitted to state the presumption in favor of testator's sanity, was erroneous and misleading.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 776, 777; Dec. Dig. § 329.*]

6. Wills (§ 55*)—Probate—Evidence—Sufficiency—Testamentary Capacity.—In a will contest, proponent need establish the instrument as the last will of a competent testator only by a preponderance of the evidence, and it was error to require such proof by clear and convincing evidence.

[Ed. Note.—For other cases, see Wills, Cent. Dig. § 138; Dec. Dig. § 55*]

7. Evidence (§ 478*)—Opinion Evidence—Sanity.—A nonexpert

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

witness may give his opinion of a testator's sanity if he states the facts and circumstances within his personal knowledge upon which his opinion is based.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2242; Dec. Dig. § 478;* Wills, Cent. Dig. §§ 113-115.]

8. Evidence (§ 474*)—Opinion Evidence—Mental Condition.—That witnesses did not have sufficient opportunity of observing testatrix to enable them to give a reliable opinion as to her sanity went only to the weight of their testimony.

[Ed. Note.—For other cases, see Evidence Cent. Dig. § 2198; Dec. Dig. § 474;* Wills, Cent. Dig. § 116.]

9. Wills (§ 53*)—Testamentary Capacity—Evidence—Admissibility.—In a will contest, upon the issue of testator's sanity, it is competent to prove the manner in which he was treated by his family.

[Ed. Note.—For other cases, see Wills, Dec. Dig. § 53.*]

10. Evidence (§ 317*)—Hearsay—Mental Condition.—Evidence by others of the opinion of testatrix's family as to her mental condition is inadmissible, being hearsay.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 1176; Dec. Dig. § 317.*]

McINTYRE et al. v. SMYTH.

Nov. 19, 1908.

[62 S. E. 930.]

1. Pleading (§ 288*)—Signature of Counsel.—Good practice requires all pleadings to be signed by counsel.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 854; Dec. Dig. § 288.*]

2. Pleading (§ 271*)—Demurrer—Permitting Amendment.—On demurrer to a pleading because not signed by counsel, it was within the discretion of the court to permit counsel to sign it, and thus remove the ground of objection.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 819; Dec. § 271.*]

3. Parties (§ 95*)—Amendment of Declaration—New Parties.—Where a declaration as originally framed was against M., trading and doing business as M. & Co., plaintiff, on subsequently ascertaining that the firm was composed of a number of persons, was entitled to amend his declaration by the insertion of their names.

[Ed. Note.—For other cases, see Parties, Cent. Dig. § 164; Dec. § 95.*]

4. Trial (§ 60*)—Order of Proof.—The order in which proof is

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